

Message Text

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ACTION ARA-10

INFO OCT-01 IO-10 ISO-00 DEAE-00 CIAE-00 INR-07 JUSE-00

NSAE-00 RSC-01 SNM-02 SY-04 TRSE-00 USIA-06 NSC-05

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R 141920Z JAN 75

FM AMEMBASSY MEXICO

TO SECSTATE WASHDC 5658

INFO USMISSION GENEVA

DIA WASH DC

ALL US CONSULATES IN MEXICO (POUCH)

C O N F I D E N T I A L MEXICO 0374

EO 11652: GDS

TAGS: SNAR MX

SUBJ: REVISION OF MEXICAN NARCOTICS LAW

DEPT PLEASE PASS TO:

DEA HQS FOR EOI-CUSACK

CUSTOMS HQS FOR DICKERSON

DIA AH-7

CSAF WASHDC

CSA WASHDC

CNO WASHDC

CMDT USCG WASHDC

COMELEVEN SDIEGO CAL

COMFIFTH ARMY

REF: A. MEXICO 0065 B. MEXICO 9836 C. MEXICO 2296

1. SUMMARY: THE REVISED MEXICAN PENAL, CRIMINAL PROCE-
DURE AND SANITARY CODES (REPORTED IN REFTELS) WERE PUBLISHED
IN THE DIARIO OFICIAL ON DECEMBER 28 AND WILL ENTER
INTO EFFECT 30 DAYS LATER, ON JANUARY 27. IN GENERAL, THE
NEW LAWS ARE DESIGNED TO TIGHTEN THE PENALTIES FOR NARCOTICS
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TRAFFICKERS BY ELIMINATING THE POSSIBILITY OF THEIR

POSTING A BOND AND OBTAINING CONDITIONAL FREEDOM, WHILE AT THE SAME TIME AVOIDING SENDING YOUNG, CASUAL USERS TO PRISON. PERSONS DECLARED TO BE ADDICTS WILL CONTINUE TO BE REMANDED TO TREATMENT FACILITIES RATHER THAN PROSECUTED CRIMINALLY. A NEW FEATURE IS THAT THOSE NOT CONSIDERED ADDICTS, BUT POSSESSING MARIJUANA AND DANGEROUS DRUGS SUFFICIENT ONLY FOR THEIR PERSONAL USE, WILL NOT BE PROSECUTED AS TRAFFICKERS BUT WILL RECEIVE SENTENCES LIGHT ENOUGH TO ALLOW THEM TO POST BOND FOR CONDITIONAL FREEDOM. NO QUANTITATIVE LIMITS FOR DETERMINATION OF POSSESSION OR TRAFFICKING CHARGES HAVE BEEN ESTABLISHED IN THE LAW. THUS, SUCH DETERMINATIONS ARE LEFT TO THE DISCRETION OF THE FEDERAL ATTORNEYS IN EACH LOCALITY. OUR BEST GUESS, THEREFORE, IS THAT WHILE THERE MAY BE FEWER U.S. CITIZENS INCARCERATED WHO ARE FOUND IN POSSESSION OF QUANTITIES OF MARIJUANA OR PILLS, THERE PROBABLY WILL NOT IN GENERAL BE MUCH CHANGE IN CHARGES PREFERRED AGAINST U.S. CITIZENS GUILTY OF OFFENSES WITH HARD NARCOTICS, OR IN THE SENTENCES METED OUT TO THEM. END SUMMARY.

2. THE MORE IMPORTANT REVISIONS ARE AS FOLLOWS:

A. THE MINIMUM PENALTIES FOR TRAFFICKING HAVE BEEN INCREASED FROM THREE YEARS TO FIVE YEARS, THREE MONTHS. UNDER MEXICAN LAW PERSONS SENTENCED TO MORE THAN FIVE YEARS MAY NOT OBTAIN CONDITIONAL FREEDOM UNDER BOND AND, THEREFORE, ALL TRAFFICKERS CONVICTED UNDER THE NEW LAW MUST BE SENT TO PRISON. THE MAXIMUM PENALTY FOR TRAFFICKING REMAINS TWELVE YEARS, AS BEFORE.

B. THE OLD LAW DISTINGUISHES ONLY BETWEEN ADDICTS (WHO ARE NOT PROSECUTED CRIMINALLY BUT ARE SENT TO TREATMENT OR, IN THE CASE OF U.S. CITIZENS, ARE DEPORTED) AND THOSE WHO TRAFFIC IN NARCOTICS (WHICH FORMERLY INCLUDED POSSESSION AS WELL). UNDER THE NEW LAW, A THIRD CATEGORY IS ESTABLISHED, THOSE WHO ARE NOT DECLARED TO BE ADDICTS BUT WHO NONETHELESS POSSESS ONLY ENOUGH NARCOTICS (INCLUDING MARIJUANA BUT EXCLUDING HEROIN AND COCAINE) FOR "THEIR OWN AND IMMEDIATE USE" - THESE PERSONS WILL BE LIABLE TO SENTENCES RANGING FROM SIX MONTHS TO THREE YEARS. HENCE

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THESE YOUNG, FIRST-TIME CASUAL USERS OF MARIJUANA OR PILLS CAN OBTAIN CONDITIONAL LIBERTY UNDER BOND, SINCE THEIR SENTENCES WOULD NECESSARILY BE LESS THAN FIVE YEARS.

C. THE PENALTIES FOR DRUGGISTS, DOCTORS, ETC. INVOLVED IN PURVEYING NARCOTICS HAVE BEEN MADE THE SAME AS FOR TRAFFICKERS, I.E. FROM FIVE YEARS, THREE MONTHS TO TWELVE YEARS (FORMERLY THE SENTENCES WERE FROM FOUR TO

TWELVE YEARS). AGAIN, ANY PERSON IN THIS CATEGORY CONVICTED UNDER THE NEW LAW WILL RECEIVE A MANDATORY PRISON SENTENCE WITHOUT BOND.

D. PERSONS WHO GROW OPIUM POPPIES, PRODUCE HEROIN OR OTHER DANGEROUS NARCOTICS, OR WHO SUPPLY THE NECESSARY FINANCIAL RESOURCES TO DO SO WILL ALSO BE SUBJECT TO THE ABOVE PENALTIES (FIVE YEARS, THREE MONTHS TO TWELVE YEARS). PENALTIES FOR THOSE GROWING MARIJUANA REMAIN FROM TWO TO NINE YEARS.

E. IMPORTATION OR EXPORTATION OF NARCOTICS WILL BE PUNISHED BY SENTENCES RANGING FROM SEVEN TO FIFTEEN YEARS, AND A FINE FROM 5,000 TO 50,000 PESOS (US \$400 TO \$4,000). THE FORMER PENALTIES WERE SIX TO FIFTEEN YEARS, AND 3,000 TO 30,000 PESOS (US \$240 TO \$2,400).

3. THE CHIEF OF THE OFFICE OF NARCOTICS CONTROL AT THE ATTORNEY GENERAL'S OFFICE HAS INFORMED THE EMBASSY THAT THE QUANTITY OF 20 GRAMS SUGGESTED BY THE AG'S OFFICE AS THE LIMIT FOR DETERMINING POSSESSION OR TRAFFICKING WAS DELETED AT THE REQUEST OF GOBERNACION (THE MINISTRY RESPONSIBLE INTER ALIA FOR DEPORTING UNDESIRABLE ALIENS). THIS LEADS US TO HOPE THAT THE NEW LAW WILL BE APPLIED WITH SOME FLEXIBILITY AND THAT THE GOM WILL CONTINUE IN EVEN MORE INSTANCES TO DEPORT (RATHER THAN IMPRISON) U.S. CITIZENS FOUND WITH SMALL AMOUNTS OF MARIJUANA OR PILLS IN THEIR POSSESSION. HOWEVER, WHILE THERE MAY BE SOME AMELIORATION IN THE NUMBER OF U.S. CITIZENS INCARCERATED FOR RELATIVELY MINOR OFFENSES (AND WE WELCOME THE GOM'S REALISM IN MAKING A QUALITATIVE DISTINCTION IN THE CASE OF MARIJUANA AND DANGEROUS DRUGS), WE DO NOT EXPECT THAT THE NEW LAW WILL BRING ABOUT ANY SIGNIFICANT CHANGE IN THE CHARGES BROUGHT AGAINST U.S. CITIZENS WHO TRAFFIC IN HARD
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NARCOTICS, OR IN THE SENTENCES HANDED DOWN TO THEM.
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